



ABAC Adjudication Panel Determination No. 47/20

Product: Wine
Company: Travelling Vineyard Australia
Media: Digital (Instagram)
Date of decision: 3 June 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram marketing communication by Travelling Vineyard Australia (“the Company”) and arises from a complaint received 6 May 2020.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

- (b) Industry codes of practice:
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 6 May 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this marketing communication.

The Marketing Communication

10. The complaint relates to the following marketing communication on Instagram.



The Complaint

11. The complainant objects to the advertisement stating:
- “Stay in. Drink Up” is not a ‘responsible or moderate portrayal of alcohol beverages’; and
 - “Try wines from all over the world without leaving your home” is emphasising how easy it is to access alcohol without leaving your home, which is concerning, as surveys have shown some people are buying more alcohol and drinking more during the COVID-19 pandemic and this increase in alcohol use could have serious health impacts.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage

The Company's Response

13. The Company responded to the complaint by email dated 18 May 2020 as follows:
 - a) We received the ABAC complaint regarding our Instagram ad that ran in April 2020. We have since removed this ad, ceased use of the language used, and paused all additional social advertising at this time as we work to comply with ABAC.
 - b) We apologize that we were unaware of the Alcohol Advertising Pre-vetting Service Approval requirement prior to running the ad and, as a result, we have now integrated the approval requirement into our business processes as part of a commitment to be compliant with the important regulations set forth by ABAC. Moving forward, you can expect us to follow all approval processes and advice from the ABAC. We thank you for sharing the complaint and educating us on ABAC regulations regarding advertising alcohol.

The Panel's View

14. Traveling Vineyard is a direct sales scheme for wine which originated in the United States and became available in Australia in late 2019. The concept appears to be based upon a person becoming a 'wine guide' who hosts wine tastings in private homes. Attendees of the wine tastings presumably taste different wines which they might then purchase for subsequent home delivery. It can be envisaged that the business model has become very difficult during the current pandemic and its accompanying restrictions on the number of people able to gather in private homes.
15. In any event the Company has conducted some social media promotion including an Instagram post which has attracted the complaint. The post features a photograph of a dog lying down with a bottle of wine with a strap line of 'Stay in. Drink up!'. The further text states 'try wines from all over the world without ever leaving your house. These award-winning wines are ready to ship directly to your door!'
16. The complainant argues the phrase 'Stay in. Drink Up' does not model a responsible or moderate portrayal of alcohol. Further, it is contended that making it easy to access alcohol without leaving your home is concerning based on claimed surveys of some people buying and consuming more alcohol during the pandemic. The Company removed the post upon receiving the complaint and advised it was not familiar with ABAC standards nor the pre vetting service which will be accessed in the future.

17. The future engagement of the Company with the ABAC scheme, particularly the pre vetting of marketing material prior to use is a very worthwhile commitment from a new player in the Australian alcohol market. The Panel however is required under its rules and procedures to make a finding on the complaint and the consistency of the marketing item with the ABAC standards.
18. In assessing if a marketing communication is consistent with the ABAC, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and opinions found in a majority of the community is the benchmark.
19. The key question in this case is how the phrase Stay in. Drink up would most likely be understood. To the complainant the phrase embodies a sentiment towards alcohol use which is irresponsible. While this is no doubt a genuinely held view of the complainant, the Panel does not believe the phrase and the post as a whole is in breach of the relevant ABAC standards. In reaching this view the Panel noted:
 - the post obliquely, rather than expressly, references the current pandemic restrictions through the 'Stay in' phrase and there is no ABAC standard which states that marketing cannot reference the drinking of alcohol at home;
 - the phrase 'Drink Up' within the context of the post does denote alcohol consumption but the phrase does not of itself suggest excessive consumption or consumption inconsistent with Australian Alcohol Guidelines;
 - the text of the post explains wine can be home delivered but this breaches no ABAC or any other regulatory standard;
 - the post does suggest that wines from the world can be tried but no particular level or pattern of consumption of alcohol is stated or implied; and
 - no inference of irresponsible alcohol use can be reasonably drawn from the post.
20. The complaint is dismissed.